

MARY ANN SMITH
Deputy Commissioner
DOUGLAS M. GOODING
Assistant Chief Counsel
JOANNE ROSS (State Bar No.: 202338)
Senior Counsel
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, California 95814
Telephone (916) 324-9687
Facsimile: (916) 445-6985

Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	FIL ORG ID.: 96348
)	
THE COMMISSIONER)	STIPULATION
OF BUSINESS OVERSIGHT,)	
)	
Complainant,)	
)	
v.)	
)	
PCJV USA, LLC,)	
)	
Respondent.)	
)	

IT IS HEREBY STIPULATED BY AND BETWEEN PCJV US, LLC (“PCJV”) and the
Commissioner of Business Oversight (“Commissioner”), as follows:

RECITALS

- A. PCJV is a Delaware limited liability company formed on July 16, 2010, with a principal address at 6380 Wilshire Boulevard, Suite 1100, Los Angeles, California 90048. PCJV engages in the business of offering and selling franchises under the name “Potato Corner.”
- B. On February 14, 2011, PCJV filed its initial application for registration to offer and sell franchises in California. This application was approved by the Department of Business Oversight

(“Department”) and became effective on April 15, 2011.

C. In March 2011, Potato Corner Global Company Limited, Hong Kong, NKM Capital Group, LLC and PCJV jointly filed Notices of Violation under section 31303 of the FIL, acknowledging that Potato Corner Global Company Limited, Hong Kong and NKM Capital Group, LLC sold three (3) Potato Corner franchises in California, in or around April 2010 without being registered with the Department.

D. On August 20, 2012, PCJV filed a renewal registration for the offer and sale of Potato Corner franchises in California. On August 23, 2012, the Department issued the registration with the Commissioner’s condition to registration that initial franchise fees could not be collected from new California franchisees until after the new franchisees commenced doing business.

E. Following the 2012 registration, PCJV collected initial franchise fees from twelve (12) California franchisees prior to their commencing business, in violation of the Commissioner’s condition to registration.

F. On September 13, 2013 PCJV filed a renewal registration for the offer and sale of Potato Corner franchises in California. On November 25, 2013, the Department again conditionally issued the registration with the requirement that initial franchise fees could not be collected from California franchisees until after the new franchisees commenced doing business. PCJV failed to disclose to the Department that it had violated this condition twelve (12) times during its previous registration period.

G. On November 22, 2013, PCJV filed a Notice of Violation under section 31303 of the FIL because it attended the West Coast Franchise Expo in October 2013, where it sold three (3) franchises after the date its prior registration lapsed and while its renewal application was pending with the Department. The Notice of Violation form was approved by the Department on November 25, 2013.

H. On February 14, 2014, PCJV filed another Notice of Violation, for violating the Commissioner’s condition to registration for one (1) of five (5) franchises sold to California franchisees in 2013. The form of the Notice of Violation was approved by the Commissioner, and PCJV paid a two thousand five hundred dollar (\$2,500.00) penalty to the Department on April 16,

2014. PCJV failed to disclose to the Department that it had violated the condition to its registration four (4) additional times during the 2013 registration period (in addition to the twelve previous violations) by collecting initial franchise fees from all five (5) California franchisees prior to their commencing business.

I. PCJV failed to inform its California franchisees that purchased franchises in 2013 and 2014 about the two Notice of Violations filed with the Department in 2013 and 2014.

J. PCJV’s auditors issued restated financial statements for 2012, 2013 and 2014 on October 20, 2015 after PCJV’s 2014 registration had lapsed. The restated financial statements were not provided to the franchisees that purchased their franchises in 2012, 2013, and 2014.

K. On October 21, 2015, PCJV voluntarily disclosed the violations described herein to the Department.

L. The Commissioner is issuing the attached Citation with Desist and Refrain Order and Assessment of Administrative Penalty; Claim for Ancillary Relief (“Citation”) under the Franchise Investment Law (Corp. Code, §31000, et seq.) (“FIL”), as a result of these violations of law by PCJV.

The Commissioner finds that this action is appropriate in the public interest and consistent with the purposes fairly intended by the policy and provisions of this law.

TERMS AND CONDITIONS

1. This Stipulation is entered into for the purpose of judicial economy and expediency, and to avoid the expense of a hearing, and possible further court proceedings.

2. PCJV hereby stipulates to the issuance of the Citation, in the form attached as Exhibit A.

3. PCJV agrees to the finality of the Citation and agrees that the Citation shall remain in effect and is public.

4. PCJV hereby agrees that within thirty (30) days from the date of PCJV’s receipt, as defined in Paragraph 16, from the Department of this Stipulation and the Citation signed by the Commissioner, it will submit to the Department a Notice of Violation (“NOV”) form for approval. The Department will approve or provide PCJV with instructions for the revision of the NOV form within thirty (30) days after receipt of the NOV from PCJV. The NOV form shall address all

relevant violations by PCJV set forth in this Stipulation and be sent to all relevant/affected franchisees within thirty (30) days after PCJV's receipt of written notice from the Department approving the NOV form via FedEx or other traceable method. PCJV shall send proof of mailings, with a copy of each NOV sent to all relevant/affected franchisees, to Joanne Ross, Senior Counsel, Enforcement Division, 1515 K Street, Suite 200, Sacramento, California 95814 within fifteen (15) days of mailing the NOVs.

5. PCJV agrees to comply with all the provisions of the Citation and this Stipulation. Failure to comply with all provisions of the Citation and this Stipulation, including failure to meet deadlines, shall constitute a breach of this Stipulation and be grounds for the Commissioner to issue a stop order denying the effectiveness of PCJV's registration under the Franchise Investment Law.

6. PCJV hereby waives a right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to the FIL, the California Administrative Procedure Act (Govt. Code, § 11370 et seq.), the California Code of Civil Procedure (Code of Civ. Proc., § 1 et seq.), or any other provision of law in connection with these matters.

7. PCJV enters this Stipulation voluntarily and without coercion and acknowledges that no promises, threats, or assurances have been made by the Commissioner or any officer, or agent thereof, about this Stipulation.

8. PCJV acknowledges that nothing in this Stipulation shall preclude the Commissioner, or the Commissioner's agents or employees, to the extent authorized by law, from assisting or cooperating in any investigation and/or action brought by any federal, state or county agency. PCJV also agrees that this Stipulation shall not bind or otherwise prevent any federal, state or county agency from the performance of its duties.

9. PCJV agrees that the delivery by certified mail of the executed Citation by the Commissioner to PCJV, attention: Guy Koren, President and Chief Operating Officer, at 6380 Wilshire Boulevard, Suite 1100, Los Angeles, California 90048, with a copy sent to Barry Kurtz, Esq., Lewitt, Hackman, Shapiro, Marshall & Harlan, 16633 Ventura Boulevard, 11th Floor, Encino, California 91436 shall constitute valid service of the Citation.

10. Each of the parties represents, warrants, and agrees that they have received independent

1 advice from their attorney(s) and/or representatives with respect to the advisability of executing this
2 Stipulation.

3 11. Each of the parties represents, warrants, and agrees that in executing this Stipulation they
4 have relied solely on the statements set forth herein and the advice of their own attorney(s) and/or
5 representatives. Each of the parties represents, warrants, and agrees that in executing this Stipulation
6 they have placed no reliance on any statement, representation, or promise of any other party, or any
7 other person or entity not expressly set forth herein, or upon the failure of any party or any other
8 person or entity to make any statement, representation or disclosure of anything whatsoever. The
9 parties have included this clause: (1) to preclude any claim that any party was in any way
10 fraudulently induced to execute this Stipulation; and (2) to preclude the introduction of parol
11 evidence to vary, interpret, supplement, or contradict the terms of this Stipulation.

12 12. This Stipulation, and Exhibit A hereto, is the final written expression and the complete and
13 exclusive statement of all agreements, conditions, promises, representations, and covenants between
14 the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous
15 agreements, discussions, negotiations, representations, and understandings between and among the
16 parties, their respective representatives, and any other person or entity, with respect to the subject
17 matter covered hereby.

18 13. In that the parties have had the opportunity to draft, review and edit the language of this
19 Stipulation, no presumption for or against any party arising out of drafting all or any part of this
20 Stipulation will be applied in any action relating to, connected to, or involving this Stipulation.
21 Accordingly, providing that in cases of uncertainty, language of contract should be interpreted most
22 strongly against the party who causes the uncertainty to exist.

23 14. The Parties hereby acknowledge and agree that this Stipulation is intended to constitute a
24 full, final and complete resolution of the violations of the FIL referenced above.

25 15. PCJV agrees to the provisions of this Stipulation solely for the limited purposes of resolving
26 the violations of the FIL referred to herein. It is the intent and understanding between the Parties
27 that this Stipulation, and particularly the stipulations of PCJV herein, shall not be binding against
28 them or admissions in any action(s) with third parties or officers or agencies of the state other than

the Commissioner of Business Oversight.

16. This Stipulation shall not become effective until signed and delivered by all parties. This Stipulation may be executed in one or more separate counterparts, each of which when so executed, shall be deemed an original but all of which, together, shall be deemed to constitute a single document. This Stipulation may be executed by facsimile or scanned signature, and any such facsimile or scanned signature by any party hereto shall be deemed to be an original signature and shall be binding on such party to the same extent as if such facsimile or scanned signature were an original signature. The Stipulation shall be deemed “received” for purposes of this paragraph when the Department emails the fully executed Stipulation to bkurtz@lewithhackman.com.

17. Each signator hereto covenants that he or she possess all necessary capacity and authority to sign and enter into this Stipulation.

Dated: December 13, 2016 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: December 8, 2016 PCJV USA, LLC

By _____
Guy Koren
President and Chief Operating Officer

APPROVED AS TO FORM:

Dated: December 8, 2016
By _____
Barry Kurtz, Esq.
Lewitt, Hackman, Shapiro, Marshall & Harlan
Attorneys for PCJV US, LLC